



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE May 4, 2022

TO Members, Select Water Committee

FROM Abigail Boudewyns, Research/Evaluation Administrator

SUBJECT SWC Interim Topic #7: Reservoir One-Fill Requirement

The Select Water Committee's task with respect to interim topic priority #7 is to review the current reservoir one-fill requirement to determine if statutory changes are necessary. The reservoir one-fill requirement allows a reservoir to only fill in priority once a year and is found in both Wyoming Board of Control rules and regulations and Wyoming Supreme Court caselaw. The foundation for the one-fill requirement comes from the prior appropriation doctrine, which Wyoming adopted in Article 8, Section 3, of the Wyoming Constitution.

In 1970, the Wyoming Supreme Court examined whether an appropriator was entitled to more than one filling of a reservoir each year up to its existing capacity.¹ In the case, the Board of Control originally found in its findings of fact and conclusions of law that the appropriator had a right to use only the water that had historically been beneficially used, so long as the use did not entail more than one filling of the reservoir.² While the Board of Control did not cite specific statutory authority limiting a storage right to one filling each year in its conclusions of law, the Court found the Board of Control's conclusion of law a reasonable interpretation of the law of prior appropriation.³ The Court formally adopted the Board of Control's reservoir one-fill requirement as a necessary means to protect junior direct-flow and storage appropriators under the prior appropriation doctrine.⁴ Citing a Colorado court case, which was considered at the time to be "general authority" on the subject, the Wyoming Supreme Court stated:

'A double filling in effect would give two priorities of the same date and of the same capacity to the same reservoir, on the same single appropriation, which is impossible in fact and in law, and, if allowed, would violate the fundamental doctrine of the law of appropriation – he who is first in time is first in right – by making a junior superior to a senior reservoir appropriator.'⁵

¹ *Wheatland Irrigation District v. Pioneer Canal Company*, 464 P.2d 533, 539-540 (Wyo. 1970).

² *Id* at 539.

³ *Id* at 539-540.

⁴ *See id.*

⁵ *Id* at 540.

In 1974, the Board of Control amended its rules to formally include the reservoir one-fill requirement.⁶ The current reservoir one-fill requirement, found in Chapter 1, Section 7 (a) of the Board of Control's rules, remains relatively unchanged from the 1974 promulgated rule and states:

A reservoir is entitled to be filled in order of priority once each year if water is available. The water year is defined as from October 1 through September 30 of the following year. If water remains unused in the reservoir at the end of the water year, this water is termed "carry-over storage" and is counted toward providing the water to meet the following year's supply for the appropriation. For example, if a reservoir which has a right to store one thousand acre-feet has two hundred acre-feet remaining in storage which is carried over into the following year, then this appropriation would be entitled to again accrue only the remaining appropriated capacity (800 af.) as the storage right comes into priority on the permitted source of supply.

If you have any additional questions or require further information, please do not hesitate to reach out to LSO at 777-7881.

⁶ Wyoming Board of Control Rules, Part IV, Chapter 7, Section 4(b) (1974).